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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SAM CLAYTON,
Plaintiff,
v.
Secretary of Dept of Homeland Security, aka
MICHAEL CHERTHOFF;
Director of U.S. Citizenship and Immigration
Services, aka EDUARDO AQUIRE;
Deputy District Director of U.S. Citizenship
and Immigration Services' San Francisco Office,
aka DAVID STILL;
Director of FBI aka ROBERT S. MUELLER;
Attorney General;
Department of Homeland Security; U.S.
Citizenship and Immigration Services; FBI;
United States;
Defendants.)
No. C 07-2781 CW
DEFENDANTS' REPLY IN SUPPORT OF
CROSS-MOTION FOR SUMMARY
JUDGMENT
Date: September 27, 2007
Time: 2:00 p.m.
Courtroom: 2, 4th Floor

Defendants hereby respectfully submit this untimely reply in support of Defendants' cross-motion for summary judgment. Plaintiff has not provided the Court or Defendants with any e-mail or telephone number to communicate with him beyond a mailing address. Defendants have been unsuccessful in contacting Plaintiff in order to meet and confer and comply jointly with the Court's scheduling order.

Defendants' Reply
C 07-2781 CW

1 In any event, Plaintiff claims he is being “extraordinarily prejudiced” by the delay in
2 adjudication of his application to adjust his status to legal permanent resident. Pl. Reply at 2-3.
3 However, as explained in Defendants’ cross-motion for summary judgment, Plaintiff may apply
4 for work authorization and for advanced parole, which enables him to travel and work during the
5 pendency of their application. Yuen Declaration ¶ 18. There is nothing that Defendants are aware
6 of preventing him from traveling to visit his ailing father or from applying to college.

7 Plaintiff wants Defendants to expedite his application and perhaps is trying to qualify as
8 someone with a significant or compelling reason for an expedite request. See Pl. Reply, at 2-3,
9 Exh. A. Plaintiff however, has provided no evidence that he has been denied Federal financial aid
10 or that his father is ailing, nor has he attempted to speak with counsel about qualifying for an
11 expedite request.

12 Plaintiff’s application has been pending 12 months and Plaintiff insists that this Court find an
13 unreasonable delay based solely on the amount of time passed since receipt of his application.
14 However, the law requires a more in-depth analysis for mandamus relief under the APA. A review
15 of the six *TRAC* factors laid out in Defendants’ cross-motion for summary judgment shows that
16 Defendants have not unreasonably delayed actions pertaining to Plaintiff’s adjustment of status
17 application. Defendants, therefore, respectfully asks the Court to dismiss all Defendants except
18 Defendant Chertoff, and grant the remaining Defendant’s motion for summary judgment as a
19 matter of law.

20 Dated: September 17, 2007

Respectfully submitted,

21 SCOTT N. SCHOOLS
22 United States Attorney

23 ILA C. DEISS
24 Assistant United States Attorney
25 Attorneys for Defendants

26
27
28 Defendants’ Reply
C 07-2781 CW

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**DEFENDANTS' REPLY IN SUPPORT OF
CROSS-MOTION FOR SUMMARY JUDGMENT**

Sam Clayton v. Michael Chertoff, et al.
C 07-2781 CW

to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope, and served as follows:

- FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

CERTIFIED MAIL (#) by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

PERSONAL SERVICE (BY MESSENGER)

FEDERAL EXPRESS via Priority Overnight

FACSIMILE (FAX) Telephone No.: See Below

to the party(ies) addressed as follows:

Sam Clayton
1049 Market Street, #203
San Francisco, CA 94103

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September 17, 2007 at San Francisco, California.

MANIK BOWIE /s/
Legal Assistant